



**U.S. Environmental Protection Agency
U.S. Department of the Interior
U.S. Department of Commerce
Washington, D.C.**

April 17, 1998

John Caffrey, Chair
State Water Resources Control Board
901 P Street
Sacramento, CA 95814

Douglas Wheeler
Secretary for Resources
1416 9th Street
Sacramento, CA 95814

Dear Mr. Caffrey and Mr. Wheeler:

We understand that the State Water Resources Control Board is considering a revised schedule of the water rights hearings to implement the Bay-Delta Accord and Water Quality Control Plan (WQCP) standards, which would extend the hearings well beyond the end of the year. We are deeply concerned that such a significant delay may threaten progress toward meeting our shared commitments in the CALFED process and related programs.

As you know, according to the schedule included in the Framework Agreement between the state and federal agencies that established the foundation for the Accord and the CALFED Bay Delta Program, the Board was originally expected to complete the water rights hearings in the summer of 1997. This schedule would have allowed the impacts of a new water rights decision to be fully incorporated into the CALFED process. Unfortunately, the draft EIS was not released until November of 1997. The Board then announced that the hearing process would be completed at the end of 1998, when the Board's interim decision to implement the Accord standards expires. Earlier this year, however, the Board released a draft revised schedule that would restructure the hearing process to allow the Board to act first on any negotiated agreements that have been developed, but would also extend the hearings well into next year.

We share the Board's desire to accommodate negotiated agreements among the water rights holders in the Bay-Delta watershed, and the federal agencies have supported development of a phased schedule to facilitate those agreements. We are concerned, however, that the negotiations are unlikely to be successful unless the Board is prepared to act in a timely fashion. Under the Board's draft revised schedule, evidentiary hearings in areas where negotiated agreements are not developed or adopted would not even begin until 1999, four years after the Accord was signed. Delays of this magnitude in the Board's decision are unlikely to provide much incentive for negotiations to commence or be completed promptly.

We are also concerned that the revised schedule may threaten the progress made to date toward completing the next phase of the CALFED Bay-Delta Program. As you know, full implementation of the Bay-Delta Accord and WQCP standards is the foundation upon which the long-term CALFED Program is based. In addition, the success of the CALFED Program will be based in large part on our ability to provide assurances that commitments to meet program goals will be met in a timely fashion. For these reasons, it will be extremely difficult, if not impossible, to develop broad-based support for a CALFED assurances package in the continued absence of timely, decisive action by the Board to meet overdue commitments on water rights and water quality standards compliance.

We are further concerned that the Board's proposed delay in reaching a final comprehensive decision may affect the ongoing implementation of the Accord. By its terms, the Accord was intended as an interim measure, designed to provide certainty for both water users and environmental interests pending long-term decisions on many of California's resource management issues. The original Accord signed in 1994 explicitly envisioned the expeditious completion of the State Board's water rights decision. Last fall, when the Accord was extended for one year, the federal parties again were relying on representations that the State Board water rights process would be completed before the end of 1998. Although we recognize that the Board proposes taking interim action to assure that Accord protections do not expire at the end of the year, we never intended that the Accord become viewed as a "permanent" fixture excusing the inability of the State Board to complete its process. The federal commitments in the Accord, both those to meet water quality standards in the interim period and those concerning the Endangered Species Act, were made in the context of a limited-term interim agreement, and all of the federal agencies will need to carefully consider the desirability of extending those commitments to accommodate the schedule envisioned by the Board.

We also note that the Board's schedule may have consequences for listing decisions under the Endangered Species Act (ESA). As you know, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) have worked closely and successfully with the State of California to develop State and local programs and regulatory mechanisms that obviate the need to list additional species under the ESA. We hope that this collaborative approach to species protection will continue. Nevertheless, as recent judicial decisions have demonstrated, the federal agencies cannot rely on mere promises of future regulatory action to avoid listings. If final action by the Board implementing the Water Quality Control Plan is again delayed, it will be more difficult for NMFS and FWS to conclude that regulatory mechanisms are in place to assure the protection of candidate and proposed species.

For all of these reasons, we believe that the potential impacts of the Board's schedule on CALFED and related programs should be further discussed and evaluated among all the parties, and suggest that the Board consider more specific mechanisms within its process to better assure completion of a comprehensive water rights decision as soon as possible. Otherwise, we risk losing public confidence in our ability to fully implement and apportion responsibility for the Bay Delta Accord standards, just as we are seeking public support for long term solutions that will demand even greater commitment and greater leadership from the CALFED agencies. Given the importance of the Accord and the CALFED Program to the State's economy and environment, we simply cannot afford to incur significant delays in the Board's process.

We believe it would be useful to schedule a meeting to discuss these issues following the state board workshop on April 21. In the meantime, please call us if you have questions, or have your staff contact Patrick Wright at 415-744-1024.

Sincerely,

Bob Perciasepe

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John Garamendi

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